



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2014 JUN -5 AM 10:38

FILED  
EPA REGION VIII  
HEARINGS CLERK

DOCKET NO.: CWA-08-2014-0021

IN THE MATTER OF:

CENTRAL TRENCHING, INC.  
5200 7<sup>TH</sup> Avenue SW  
Minot, ND 58701

Respondent

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 5<sup>th</sup> Day of June, 2014

Elyana R. Sufin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 APR 10 AM 11:14

EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
)  
Central Trenching, Inc., ) COMBINED COMPLAINT AND  
5200 7<sup>th</sup> Avenue SW ) CONSENT AGREEMENT  
Minot, ND 58701 )  
)  
) Docket No. CWA-08-2014-0021  
)  
Respondent. )

The United States Environmental Protection Agency, Region 8 (EPA) and Central Trenching, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

**AUTHORITY**

1. This Combined Complaint and Consent Agreement (Agreement) is issued under the authority of section 309 (g)(2)(A) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g)(2)(A).
2. With this Agreement, the parties intend to commence and conclude this matter simultaneously, as authorized by 40 C.F.R. §§ 22.13(b) and 28.18(b)(2) and (3).

**STATEMENTS OF THE PARTIES**

3. Solely for the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained in paragraphs 4 and 5 of this Agreement. The Respondent consents to the assessment of the civil penalty referenced below, waives any right to a hearing before any tribunal or to contest any statement of law or fact in this Agreement, and waives any right to appeal any final order approving this Agreement (the Final Order). The Respondent does not admit or deny any matter the EPA has alleged in paragraphs 6 through 31 of this Agreement

**THE EPA'S ALLEGATIONS**

The following allegations apply to all times relevant to this action and to each part of this Agreement.

### **Jurisdictional Allegations**

4. This Agreement is issued pursuant to section 309(g) of the Clean Water Act (the Act), 33 U.S.C. §1319(g). Section 309(g) of the Act authorizes the EPA to make findings and to assess civil administrative penalties for violations of, among other things, section 301 of the Act, 33 U.S.C. § 1311.
5. This proceeding is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations (C.F.R.) part 22, a copy of which is has been provided to Respondent.

### **Statutory and Regulatory Framework**

6. The objective of the Act is to restore and maintain the chemical, physical and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as in compliance with, among other things, section 402 of the Act, 33 U.S.C. § 1342.
8. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the EPA and authorized states to issue National Pollutant Discharge Elimination System (NPDES) permits, after notice and opportunity for public hearings, for the discharge of pollutants into navigable waters.
9. The North Dakota Department of Health (NDDH) was approved by EPA to administer the NPDES program on June 13, 1975. (40 Fed. Reg. 28663, July 8, 1975.)
10. The terms "discharge of a pollutant" and "discharge of pollutants" are defined in section 502(12) of the Act to mean, in pertinent part, "any addition of any pollutant to navigable waters from any point source . . . ." 33 U.S.C. § 1362(12).
11. Section 502(6) of the Act defines "pollutant" as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).
12. The term "point source" is defined, in pertinent part, in section 502(14) of the Act as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

13. The term “navigable waters” is defined in section 502(7) of the Act as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
14. The term “waters of the United States,” as defined in 40 C.F.R. § 122.2, includes, among other things, all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce. It also includes tributaries of such waters.
15. “Person” is defined in section 502(5) of the Act as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).
16. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), as adjusted by inflation by 40 C.F.R. part 19, authorizes the EPA to assess a Class I civil penalty of up to \$16,000 per violation of section 301 of the Act, 33 U.S.C. § 1311, up to a maximum of \$37,500, for violations occurring after January 12, 2009.

#### **Allegations of Fact and Law**

17. Respondent is a corporation organized under the laws of the state of North Dakota.
18. Respondent is a “person” as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5).
19. Respondent performs directional drilling for installation of power and telephone lines. Respondent’s drilling process generates a soil and water slurry mixture.
20. On August 13, 2013, in response to a citizen complaint regarding dumping of soil and water, representatives of the EPA, NDDH, and the City of Minot inspected a facility (the Site) in or near Minot, North Dakota, at latitude 48.2318 degrees north and longitude 101.3695 west. The EPA-NDDH-City of Minot inspection revealed that Respondent and/or persons acting under its direction had been disposing of its water and soil slurry at the Site by dumping the slurry along the banks of Gassman Creek.
21. Respondent disposed of the water and soil slurry referenced in paragraph 20, above, by vacuuming it into a directional boring trailer and subsequently dumping the mixture from the trailer along the banks of Gassman Creek, from which it entered Gassman Creek via erosion ditches, gullies, and/or channels.
22. The trailer and erosion ditches, gullies, and/or channels referenced in paragraph 21, above, each constitute a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).
23. The soil and water slurry referenced in paragraph 20, above, constitutes a “pollutant” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).

24. Gassman Creek is a perennial tributary of the Souris River. Gassman Creek flows into the Souris River approximately 1,800 feet from the Site.
25. The Souris River is a perennial, navigable-in-fact water.
26. Gassman Creek and the Souris River are “waters of the United States” as defined in 40 C.F.R. § 122.2 and “navigable waters” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
27. Respondent’s disposal of its soil and water slurry referenced in paragraph 20, above, into and along the banks of Gassman Creek constitutes the “discharge of a pollutant” as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12).
28. At no time was Respondent authorized by any Clean Water Act permit to discharge the soil and water slurry referenced in paragraph 20, above, into Gassman Creek or the Souris River.
29. Pursuant to section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the NDDH regarding assessment of this administrative penalty by furnishing a copy of this Agreement and inviting comments on behalf of the NDDH.
30. Respondent’s unpermitted discharges of water and soil slurry described in paragraphs 20 through 28, above, violated section 301(a) of the Act, 33 U.S.C. § 1311(a).
31. Each unauthorized discharge described in paragraphs 20 through 28, above, constitutes a separate violation of section 301 of the Act, 33 U.S.C. § 1311, and is subject to a separate penalty pursuant to section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A).

### **CIVIL PENALTY**

32. The Respondent consents and agrees to pay a civil penalty in the amount of four thousand dollars (\$4,000) in the manner described below:
  - a. Payment shall be in a single payment of \$4,000, due no later than 30 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 AM Eastern Standard Time to be considered as received that day.
  - b. The payment shall be made by remitting a cashier’s or certified check or making a wire transfer or on-line payment. The check or other payment

shall designate the name and docket number of this case, be in the amount stated in part "a," above, and be payable to "Treasurer, United States of America." It shall be sent as follows:

If sent by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If sent by any overnight commercial carrier:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA: 021030004 / Account Number: 68010727

The payment may also be made on-line by accessing "www.pay.gov."

A copy of the check (or notification of wire transfer or on-line payment) shall be sent simultaneously to:

Gwenette C. Campbell, Unit Chief,  
NPDES Enforcement Unit  
Water Enforcement Program (8ENF-W-NP)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1<sup>st</sup> late day, 30 days of interest will have accrued).
  - d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
  - e. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
33. Nothing in this Agreement shall relieve the Respondent of the duty to comply with the Act, its implementing regulations, and any permit issued pursuant to the Act.
34. Any failure by the Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.
35. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by the Respondent to meet its obligations under this Agreement.
36. The undersigned individual certifies that he is fully authorized to enter into the terms and conditions of this Agreement and to bind the Respondent to the terms and conditions of this Agreement.
37. The parties submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
38. Each party shall bear its own costs and attorney's fees in this matter.
39. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a full settlement of the United States' claims for civil penalties against the Respondent for the specific violations alleged in this Agreement.

**PUBLIC NOTICE**

40. As required by section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to requesting issuance of the Final Order, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant**

Date: 4-10-14

By: Eddie A. Sierra  
Eddie A. Sierra  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

**CENTRAL TRENCHING, INC.,  
Respondent**

Date: 4-2-14

By: William Houim pres.  
William Houim, President



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **CENTRAL TRENCHING, INC. DOCKET NO.: CWA-08-2014-0021**, was filed with the Regional Hearing Clerk on April 10, 2014. The **FINAL ORDER** was filed on June 5, 2014.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Margaret "Peggy" Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail, domestic return receipt and emailed on June 5, 2014, to:

Mr. William Houim, President  
Central Trenching, Inc.  
5200 7<sup>th</sup> Ave. SW  
Minot, ND 58701  
jschell@centraltrenching.com

And emailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

June 5, 2014



Tina Artemis  
Paralegal/Regional Hearing Clerk